BAIL SLIP

The Ap[pellant in Crl.A.No. 1158/2000 (Accused in CC.No.1 of 1997 on the file of the Spl. Judge, Cum Chief Judicial Magistrate, Coimbatore) was directed to be released on bail as per order dated 15.12.2000 in Crl.M.P.9285/2000.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 19.06.2007

CORAM:
THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.1158 of 2000

K.Dhanalakshmi
W/o.Kandasamy

(Amended as per order
of the Court dated 12.2.2007
Crl.M.P.No.121/2007) ..Appellant/Accused

vs.

State of Tamil Nadu
Rep by Inspector of Police,
Vigilane and Anti Corruption,
Coimbatore,
(Crime No.791/AC/CD) .. Respondent/Complainant

Prayer: This Appeal has been preferred against the judgment dated 27.11.2000 made in Special C.C.No.1 of 1997 on the file of the Special Judge-cum-Chief Judicial Magistrate, Coimbatore.

For Appellant : Mr.G.M.Ramasubramanian
for M/s Ram & Ram,

For Respondent : Mr.V.R.Balasubramanian
Additional Public Prosecutor

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JUDGMENT

This appeal had arisen out of the judgment in Special C.C.No.1 of 1997 on the file of the Special Judge-cum-Chief Judicial Magistrate, Coimbatore. The accused was charged under Section 13(1) (e) r/w 13(2) of the Prevention of Corruption Act.

2.After taking cognizance of the offence, the learned Chief Judicial Magistrate issued summons to the accused and on his appearance copies under Section 207 of Cr.P.C., were furnished to the accused and when charges were framed and explained to the accused he pleaded not guilty.

3.On the side of the prosecution P.W.1 to P.W.44 were examined and Ex.P.1 to Ex.P.48 were exhibited and M.O.1 was marked.

4.The case of the prosecution in a nutshell is as follows:-

Between the check period 1.1.1983 to 31.8.1990 the accused was serving in the government service as a DCTO at Ootacamund and during the relevant period he had amassed wealth to the tune on Rs.11,78,531/46 in the name of his father Palanisamy Gounder, his mother Thirumathy.Rajammal and his wife Dhanalakshmi, thereby comitting an offence punishable under Section 13(1)(e) r/w 13(2) of the Prevention of Corruption Act, 1988.

5.P.W.1 is the Director of Commercial Tax Department, who had issued order of sanction for prosecution Ex P1 against the accused after applying her mind on the materials produced against the accused.

6.P.W.2 is the Assistant Engineer of Public Works Department, Coimbatore, who had inspected the building bearing door No.137, 138, 138A, 138B, 138C, 138D & 139 on 23.10.1991 and also the building bearing door No.1, 52, 52A, 52B & 52C at Avarampalayam, Ganapathy village, Coimbatore, in the presence of the witnesses. Ex.P.2 is the valuation report filed by him.

7.P.W.3, the Inspector of Coimbatore Corporation, would depose that H.15 licence was granted in favour of Palanisamy Gounder, father of the accused, to construct only the ground floor in S.F.No.169/3 in Ganapathy village.

8.P.W.4, the then Executive Engineer PWD, Coimbatore, had inspected the building bearing door No.137, 138, 138A, 138B, 138c, 138D & 139 in Ganapathy Village, Coimbatore, and furnished Ex.P.4-assessment report. Ex.P.5 is the separate assessment report filed by him in respect of door

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No.1, 52, 52A, 52B, 52C, shopping complex building. According to him, the value of the property mentioned in Ex.P.4 come to Rs.3,12,990/- and the value for the property assessed under Ex.P.5 comes to Rs.11,00,000/-. According to him, Ex.P.4 & 5 were prepared by him only after the inspection of the Assistant Engineer PWD and that the above said buildings were constructed before 1989 and that the prevailing cost for the building materials in the year 1989 alone was taken into consideration while assessing the value of the building under Ex.P.4 & Ex.P.5.

9.P.W.5 is the then Deputy Director of Income Tax Department. According to him, Ex.P.6-income tax file related to Mr.Palanismay (father of the accused) for the assessment year 1983-84, 1984-85, 1985-86 and that from the year 1983 he was submitting the income tax report and has paid income tax till 1993-1994 and his wife Rajammal has also paid income tax for the year 1984-85 till 1987-88 under Ex.P.7.

10.P.W.6 is the then accountant in the electricity department. Ex.P.8 is the file relating to the payment of electricity consumption charges for electricity connection No.79 relating to the period from June-1983 to January-1991.

11.P.W.7 is the Bill Collector of Coimbatore Corporation. He would say that for Door Nos.137, 138, 138A, 138B, 138C, 138D in Ganapathy village, Coimbatore and the corporation tax was paid for 1983-84 second half year till 1985-86 second half year by Mr.Palanisamy at the rate of Rs.173.35 for half year and for the first half year for 1986-87 and second half year for 1989-90 he has paid Rs.221.95 and for the second half year Rajamal had paid house tax under Ex.P.11.

12.P.W.8 is the Assistant of the Coimbatore Corporation. He would depose that the water cess for Door No.6/138 C has been collected in the name of Mr.Palanisamy and water connection No.100587 stands in the name of Palanisamy and Ex.P.12 is the relevant file relating to the payment of water cess by the said Palanisamy.

12a.P.W.9 has produed Ex.P.13 to show that the school fees collected from the daughter of the accused viz.Rajakumari, Vijayalakshmi & Jaiyalashmi from the academic year 1982-83 till 1991-92 in the higher secondary school, Coimbatore.

13.P.W.10 is the Secretary of CMS College, Coimbatore. According to him, Selvi.K.Rajakumari, the daughter of the accused, had studied in the

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said college in BBM course during 1990-92 and that she had paid Rs.3,885/- towards semester fees under Ex.P.14 and that at the time of joining in the college she had paid Rs.5,000/- towards donation.

14.P.W.11, Thangaraj, is the District Registrar of Ootacamund Region and he worked as Sub-Registrar at Gandhipuram, Coimbatore, from 8.7.1991 to 20.4.1994. He has furnished registration copy for document No.657/68 under Ex.P.15, document No.1700/71 under Ex.P.16, Document No.1271/73 under Ex.P.18, document No.1368/67 under Ex.P.19 and document No.368/67 under Ex.P.20.

15.P.W.12 is the then Principal of the CMN Metriculation Higher Secondary School, Coimbatore, in which school, the accused's son Rajeshkanna was studying from 1st standard to 4th standard from the academic year 1986-87 to 1990-91 and during that period Rs.3,501/50 was paid by him. Ex.P.21 is the relevant register.

16.P.W.13, Natarajan, is a PA to Deputy Commissioner of Commercial Tax, Coimbatore. He would depose that the accused Kandasamy was working as a Deputy Commercial Tax Officer from 1.1.1983 to 31.10.1991 and that Ex.P.22 is the file relating to his pay, arrears of pay etc.

17.P.W.14, Ramachandran, is the Assistant Manager of Indian Overseas Bank, Ganapathy Branch during 1991. Ex.P.23 is the file relating to the SB account No.2272 for the period from January-1986 to 6th October-1990 for the account holder Mr.Palanisamy and also for the SB account NO.9753 from 30.8.1990 to 15.10.1990 for the account holder K.Dhanalakshmi.

18.P.w.15 is the then Motor Vehicle Inspector of Trichy region. As per Ex.P.24, motor cycle bearing No.TNY 6015 belongs to the accused Kandasamy and the name transfer was effected on 29.9.1978.

19.P.W.16 is the retired Deputy Commercial Tax Officer. According to him, as per Ex.P.25-file relating to the details of the assets both movable and immovable belong to the accused Kandasamy. Ex.P.26 is the statement of assets submitted by the accused.

20.P.W.17, Sundararajan, would depose that old door No.103 and new door No.138B belongs to the father of the accused under whom he is a tenant for the above said building for a monthly rent of Rs.1,800/-. Besides rent he has also paid Rs.2,500/- towards advance and that there was no rental agreement executed by him in favour of the father of Kandasamy and that the rent was increased to Rs.2,50/- from the year 1999.

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21.P.W.18 is another tenant under the father of the accused for door Nos.138A and 138C for a monthly rent of Rs.500/- and the advance paid by him was Rs.7,000/-. He would depose that the monthly rent of Rs.500/- was paid by him to the accused till 1991.

22.P.W.19 is also an another tenant under the father of the accused for door No.137, for a monthly rent of Rs.1,500/- and that the advance paid by him was Rs.10,000/- and that he was in the said building as a tenant till 1991.

23.P.W.20, Mr.Subramaniam, is also a tenant under the accused. But he has not supported the case of the prosecution. Hence, he was treated as hostile witness.

24.P.W.21 is the another tenant under Mrs.Rajammal, the mother of the accused, in door No.138D for a monthly rent of Rs.1000/- from 1983 and that the rent was increased from 1988 from Rs.1000/- to Rs.1,500/- and that she has paid Rs.5000/- towards advance. According to him, he is also a tenant under Palanisamy Gouner for a sum of Rs.1,200/- per month and the advance paid by him was Rs.5,000/- and that he had vacated the premises in the year 1992.

25.P.W.22, Kaliyammal, would depose that she had advanced Rs.10,000/- as hand loan to Palanisamy Gounder. But she was treated as hostile witness.

26.P.W.23 is known to the accused Kandasamy. According to him, the accused had conducted an ice cream Parlour in his name and he was maintaining the accounts of the said ice cream parlour and Ex.P.27 is the rental agreement entered into between him and Palanisamy.

27.P.W.25 is the then Deputy Manager of New India Insurance Company, Coimbatore, during the year 1994. Ex.P.29 is the letter demanding the premium for insurance in respect of Rajdood motor cycle and Luna moped and Ex.P.30 is the insurance policy in respect of Rajdood motor cycle.

28.P.W.26 is the correspondent for Suburailu College of Pharmacy at Mathukadai. According to him, K.Vijayalakshmi, the daughter of the accused, was doing D-pharmacy during the year from 1986 to 1990 and that Rs.5000/- was collected from her towards donation. But she was also treated as hostile witness.

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29.P.W.27 is an Auditor. According to him during 1986-87 when the accused was working as DCTO his father Palanisamy was introduced by him by the accused and that the income tax assessment report for Palanisamy and Rajammal was prepared by him for the assessment year 1983-84, 1984-85, 1985-86 & 1987-88 for Palanisamy and he has prepared an income tax statement for Rajammal for the assessment year from 1984-85 to 1987-88 under Ex.P.7. According to him, only on the basis of the particulars furnished by the accused Kandasamy, he had prepared the above said statements for the parents of the accused.

30.According to P.W.28, during the year 1988 he had acquaintance with the accused through his assistant and that the accused had approached him for preparing income tax assessment report for his parents Palanisamy & Rajammal and that pages 73 to 78 in Ex.P.6 are the income tax report for the year 1988 to 1991 for Palanisamy was prepared by him.

31.P.W.29 would admit that Ex.P.31 series were furnished by him to the vigilance department and that they were submitted by the accused Kandasamy on 4.2.1992 and that they related to the family expenses met by the accused from 1.1.1983 to 31.12.1990.

32.P.W.30 would depose that the accused was issued with two gas cylinder connections in the year 1986.

33.P.W.31 and P.W.32 have not supported the case of the prosecution.

34.P.W.33 is the Deputy Commercial Tax Officer. According to him, the accused Kandasamy was also working as Deputy Commercial Tax Officer along with him and that he is a good friend of him. According to him his father Narayana Iyangar had lend Rs.1,00,000/- to Palanisamy Gounder, the father of the accused Kandasamy. He would admit that no amount was paid in his presence. He was also treated as hostile witness. P.W.34 was also treated as hostile witness.

35.P.W.35 would say that he had drafted the promisory note for Narayana Iyangar, wherein the accused Kandasamy signed as a witness.

36.P.W.36 has not supported the case of the prosecution. Hence he was treated as hostile witness.

37.P.W.37 would say that the accused's father was drawing income through milch cows.

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38.P.W.38 is a neighbour of the of the accused. He would depose to the effect that apart from the income derived from milk business and from the rental income, there was no other income for Rajammal and Palanisamy, parents of the accused.

39.P.W.39 has given Ex.P.35-report dated 1.9.1990 in respect of the building S.F.No.169/3 at Ganapathy village, Coimbatore. He has also assessed the value of the building in Ex.P.35.

40.P.W.40 has not supported the case of the prosecution. Hence, he was treated as hostile witness.

41.P.W.41 is the branch manager of State Bank of India, Opanakara street branch, Coimbatore. Ex.P.36 is the extract relating to the savings bank Account No.24/5439 relating to Palanisamy. According to him, the SBI saving account was opened on 6.2.1990. Ex.P.37 is the copy of the statement of account. Ex.P.38 is the office note for the medium term loan advanced to Palanisamy. Ex.P.39 is the letter addressed by him to the Inspector of Police, Vigilance and Anti Corruption Department, Coimbatore. According to him, Ex.P.36 to Ex.P.38 were prepared in their office. He would depose that on 10.9.1990 Palanisamy had obtained Rs.1,16,000/- towards medium term loan.

42.P.W.42 is the then Inspector of Police, Vigilance and Anti Corruption department. As per the directions from the head office, he conducted enquiry on the basis of the complaint against the accused and he found that the accused had amassed wealth disproportionate to the known source of income and that after conducting the enquiry, he had submitted his report on 4.12.1990 to his higher officials and as per the instructions from the head office he had registered a case under Cr.No.7/91/Ac/CD on 16.3.1991 against the accused under Section 13(2) r/w 13(1)(C) of the Prevention of Corruption Act. Ex.P.48 is the FIR.

43.P.W.43 has not supported the case of the prosecution. Hence he was treated as hostile witness.

44.P.W.44 is the investigating officer. He had conducted the investigation and examined the witnesses and recorded their statements and after completing the formalities has filed the charge sheet against the accused.

45.When incriminating circumstances were put to the accused under Section 313 of Cr.P.C., the accused denied his complicity with the crime. The accused has examined D.W.1 to D.W.3 and exhibited Ex.D.1 to D.17. After going through the oral and documentary evidence, the learned trial

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Judge has come to the conclusion that the charge levelled against the accused under Section 13(1)(e) r/w 13(2) of the Prevention of Corruption Act has been proved beyond any reasonable doubt and convicted and sentenced the accused to undergo 3 years RI and to pay a fine of Rs.10,000/- with default sentence. Aggrieved by the findings of the learned trial Judge, the accused has preferred this appeal.

46.During the pendency of the appeal, the accused died and his wife K.Dhanalakshmi was impleaded in the appeal as per the order of this Court in C.M.P.No.121 of 2007 dated 12.2.2007.

47.Heard the learned counsel Mr.G.M.Ramasubramanian appearing for the appellant and the learned Additional Public Prosecutor Mr.V.R.Balasubramanian and considered their respective submissions.

48.The point for determination in this appeal is whether the charge levelled against the accused under Section 13(1)(e) r/w 13(2) of the Prevention of Corruption Act, has been proved beyond any reasonable doubt to sustain the findings of the learned trial judge in Special C.C.No.1 of 1997 on the file of the Special Judge-cum-Chief Judicial Magistrate, Coimbatore?

49.The Point:- The learned counsel appearing for the appellant would contend that the charge against the accused is one under Section 13(1)(e) of the Prevention of Corruption Act, which reads as follows:-

> "13 Criminal misconduct by a public servant
>
> (1) A public servant is said to commit the offence of criminal misconduct,-
>
> (a) .....
>
> (b) .....
>
> (c) .....
>
> (d) .....
>
> (e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.
>
> Explanation:for the purpose of this section "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

Admittedly the accused was a public servant working in the Commercial Tax Department as a Deputy Commercial tax officer. According to the

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prosecutor, the accused had amassed assets to the tune of Rs.11,78,531/46 during the period from 1.1.1983 to 31.8.1990 disproportionate to the known source of income. During 1985, the appellant, according to the prosecutor had purchased hendex colour TV worth Rs.12,000/- and in the name of his wife Dhanalakshmi in the Savings bank account NO.9753 of Indian Overseas Bank, Ganapathy Branch and a sum of Rs.40,100/- was in the credit as on 31.8.1990 in the name of the accused's mother Mrs.Rajammal. Door Nos.137 & 138, P.N.Palayam Road, Ganapathy Village in S.F.No.174, the cost of the construction come to Rs.1,15,512/-. No amount was found in her name. But an extent of 2 cents and 329 sq ft in S.F.No.174(1) Ganapathy village has been purchased in the name of Rajammal for Rs.1,800/-. Apart from this no other immovable property was found in the name of Rajammal. The cost of the construction of door No.137, 138 at P.N.Palayam in S.F.No.174 in the year 1983 to the tune of Rs.1,15,512/- and the cost of the construction of door No.137 & 138 in Abboy Naidu layout, P.N.Palayam Road, in SF.No.174 during the year 1983-84 to the tune of Rs.1,66,137/- and the cost of the construction of Door Nos.1, 52, 52A, 52B, 52C in SF.No.168/3 Avarampalaym Road, Gnapathy village during the year 1989-90 to the value of Rs.11,00,000/- and a sum of Rs.182/- in saving bank Account nO.P24/5439, in State Bank of India, Coimbatore branch, are in the name of Palanisamy, the father of the accused. So it is the duty of the accused to explain the known source of income for the above said amount and also the construction costs meeted out by his father for the buildings in door Nos.137, 138, 1, 52, 52A, 52B, 52C in SF.No.168/3.

49(A) On the side of the prosecution to substantiate that the father of the accused viz. Palanisamy without any source of income of his own had consutrcted the building in Door Nos.52A, 52B, 52C in S.F.No.168/3 Avarampalayam Road, Ganpathy village at the cost of Rs.11,000/- and also to prove that the accused's father had constructed a building in Door Nos. 137, 138 (ground floor) in P.N.Palayam at the costs of Rs.1,66,137/- and also the construction of building in door No.137, 138 in P.N.Palayam in Ganapathy village in S.F.No.174 at the costs of Rs.1,15,512/-, has examined P.W.2, P.W.4 & P.W.39, Assistant Engineer PWD, Superintendent Engineer PWD, a private Civil Engineer, who had prepared the plane for the construction of the building in S.F.No.168/3 shopping complex respectively. P.W.2 estimated the cost of the construction in door No.1, 52, 52A, 52B, 52C and also the building in door No.137, 138, 138A, 138B, 138C, 138D and 139 under Ex.P.2. Through P.W.4 the cost of the construction in Door Nos.1, 52, 52A, 52B, 52C and the shopping complex building has been assessed and the assessment report is Ex.P.4. According to P.W.4, the value of the construction come to Rs.3,12,990/-. P.w.39 would admit that he had prepared the place for the construction of the shopping complex at S.F.No.169/3 and after the completion of the

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construction he had visited the building and submitted a report dated 1.9.1990 under Ex.P.35, wherein he has assessed the value of the construction of the shopping complex. In the cross-examination, he would admit that while assessing the value of the construction the prevailing market value for the building materials in the year 1990 were taken into consideration. As per Ex.P.5 the value of the construction of the building (shopping complex) is Rs.11,00,000/-. The defence taken by the accused is that Palanisamy, the father of the accused, is an income tax assessee and that out of his own income the shopping complex at the cost of Rs.11,00,000/- was constructed in door Nos.52,52A, 52B, 52C in S.F.No.168/3 in Avarampalayam road, Ganapathy village.

49(B) D.W.1 is Palanisamy, the father of the accused. According to him, he had joined in a chit conducted by Cheran Chit Companay as a subscriber for a chit to the tune of Rs.10,00,000/- and he bid the chit for Rs.5,00,000/ and has received the sum of Rs.5,00,000/- from the above said chit company and constructed the building in the above said shopping complex. In support of this defence, D.W.1 has produced only M.O.1, Photo, said to have been taken at the time of the presentation of the cheque for Rs.5,00,000/- from the said Cheran Chit Company. D.W.1 has not produced the said cheque or any other related document to show that he had received Rs.5,00,000/- from the Cheran Chit Company. In this connection it is relevant to refer Ex.D.8. D.W.1 has produced Exs.D.8 & 9 in support of his contention to show that he has received Rs.5,00,000/- from the Cheran Chit Funds Company. But a perusal of Ex.D.8 will go to show that including the prize amount the liability of Palanisamy under the chit comes to Rs.9,20,000/- the prize amount of Rs.5,00,000/-) and he has been directed to furnish surety or guaranty for the disbursement of the chit amount of Rs.5,00,000/- that too in November-1991. Further, he has been directed to secure surety before 24.12.1991 otherwise the amount will be deposited in a bank. Ex.D.9 is the xerox copy of the mortgage deed executed in favour of M/s.Cheran Chit Funds company towards surety for the prize amount. It is pertinent to note from Ex.D.9 that the schedule of property column is left blank and no proprietor has signed as a surety under Ex.D.9 to receive the amount mentioned in Ex.D.8 i.e. Rs.5,00,000/-. Absolutely there is no document produced by D.W.1-Palanisamy to show that out of the prized chit amount of Rs.5,00,000/-, he had constructed the above said shopping complex building in the above said survey number properties. He would rely on some of the promissory notes to show that he had borrowed the amount from one Krishnasamy, Balan & Mariyappan. Krishnasamy was examined as P.W.35, who would say that he had prepared two promissory notes each for Rs.50,000/- and gave to the accused himself. P.W.35 has not stated that consideration was passed under Ex.D.1—

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promissory note. He would further state that likewise Exs.P.32 to 34 promissory notes were also prepared by him and afterwards handed over to the accused after getting the signature from his father Palanisamy. In the cross-examination also P.W.35 would admit that Palanisamy had executed the promissory note in his name but he has not lend any amount to Palanisamy under the said promissory note. He would further admit in his cross-examination that Exs.D.1 to 3, Promissory Notes, were prepared by him. But subsequently they have been renewed by new promissory notes to save limitation. D.w.1 has not examined any person, who had advanced loan to him under any of the promissory notes produced and mortgaged by him in this case. Neither Balan nor Mariyappan two promisees under Ex.D.11 and Ex.D.12 promissory notes have not been examined on behalf of the accused. D.W.2 is the wife of the accused. According to her, as per Ex.D.15-'Will' she got Rs.30,000/-. But a perusal of Ex.D.15-Will said to have been executed by her father would go to show that a direction has been given by executor of the Will to sell some of the properties and to give Rs.30,000/- each to three of his daughters one being D.W.2-Dhanalaskhmi. There is no document produced by D.W.2 to show that in pursuance of Ex.D.15 a sale deed was executed in respect of the property mentioned in the said sale deed. Out of the sale proceeds Rs.30,000/- was given to her in terms of the Will. She would depose that she got Rs.30,000/- by way of cheque. But she is bereft of details when the cheque was handed over to her and when she deposited the said cheque for collection etc. Further D.W.2 would depose that she had Rs.40,000/- from out of the sale proceeds relating to another land. Absolutely there is no documentary evidence to substantiate the above said claim.

49(C)D.W.3, an employee under Cheran Chit funds Company, would depose that under Exs.D.16 & 17 commission for the subscription was given to her. Ex.D.16 is for Rs.9,500/-. Ex.D.17 is for Rs.6,100/-. Those two receipts will show that as an agent for Cheran Chit Funds Company, Dhanalaskhmi has been given her due commission for joining the subscriptions for the chits conducted by the Cheran Chit Funds Company.

49(D)The learned counsel for the appellant relying on Ex.P.47, letter of reply sent by the accused to Investigating Officer, by way of defence he would say that only from the prized amount in the chit both his father and mother have met the cost of the construction. He would specifically state that the shopping complex in P.N.Palayam Road was constructed only at the costs of Rs.6,04,000/- and not at the cost of Rs.11,00,000/- as alleged in the complaint, whereas contrary to this defence taken by the accused, D.W.1-father of the accused in his evidence would depose that out of the prized amount of Rs.5,00,000/- he had constructed the shopping complex. As I observed earlier absolutely there is no document produced

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on the side of the accused to show that his father Palanisamy had spent Rs.5,00,000/- for the construction of the shopping complex out of the prize amount of Rs.5,00,000/- in the Cheran Chit Funds Company. P.W.39 would depose that the cost of the construction was assessed under Ex.P.35 taking into consideration the prevailing market value of the materials for construction.

49(E) The learned counsel for the appellant relying 2006 Crl.L.J. 319 (D.S.P.Chennai Vs. K.Inbasagaran), would contend that the accused, his father and mother and his wife Dhanalakshmi were living under the same roof and that they were having separate income from various sources and only with the amount earned by them ie., with their separate income the shopping complex and other buildings were constructed. The facts of the above said ratio decidendi reads as follows:-

> "The accused K.Inbasagaran was a senior IAS Officer of the Government of Tamil Nadu who stood charged for offence punishable under Section 13(2) r/w section 13(1)(e) of the Prevention of Corruption Act, 1988, and he was convicted and sentenced by the learned Special Judge (XIth additional Judge, City Civil Court) at Madras, to undergo RI for one year and also to pay a fine of Rs.5,000/-,in default to undergo RI for three months. The accused preferred an appeal before the Madras High Court. The learned Single Judge of this Court acquitted the accused from the above said charges. Against the said findings of this Court, the State preferred the said appeal before the Honourable Apex Court.
>
> According to the prosecution, the accused entered into the Indian Administrative Service during 1970. During September, 1993, there was a raid conducted by the Income-tx Authorities in the houe of the accused. The raid by Income-tax department yielded a huge amount of cash amounting to Rs.30 lakhs, 7 gold biscuits weighing 819 grams, 1118 dollars and certain documents regarding purchase of immovable properties and also fixed deposit receipts of the bank for Rs.25,000/- in the name of their parties. The Income-tax authorities registered the case.
>
> The defence taken by the accused before the trial Court is that assets seized by the Income-tax department do not belong to him, but they belongs to his wife, who was running certain companies and that his wife also accompanied him when he went to America where she worked in apharmaceutical company and also as a clerk in State Bank of India and she earned salaries and was also assessed by Income-tax Department in America and at the

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time of her return from America, she brought cash video camera and a computer and she leased out the video camera for marriage coverage and earned sufficient monies. She had started a computer concern under the name and style of Tamil Nadu Computer Service by incurring a loan of Rs.2,00,000/- from Punjab national Bank and computer centre also generated funds.

Even though the trial Court not accepted this defence, the High Court had accepted this defence, which was challanged by the State before the Honourable Apex Court. While confirming the findings of this Court, the Honourable Apx Court has observed in the above said ratio decidendi as follows:-

> The basic question that emerges in the present case is whether the accused could be saddled with all the unaccounted money at his hand or not. It is the admitted position that both the husband and wife were living together. The wife was running three concerns thoguh those concerns were running in loss. Yet she could manage to earn black money by selling goods without bills and amassed this wealth without disclosing the same to the Income-tax authority and when the raid was conducted she disclosed the unaccounted money and accepted herself for being assessed by the income-tax Department. Therefore, in this context, the question arises whether the joint possession of the premises by the husband and wife and the unaccounted money which has been recovered from the house could be said to be in exclusive possession of the accused. There is no two opinion in the matter that the initial burden has to be discharged by the prosecution. The prosecution in order to discharge that burden has examined the investigating officer, P.W.53-Shri Viswanathan, D.S.P. (Investigation). P.W.53-Viswanathan has collected all the materials from various places and he has gien the details of his investigation. He has also supported the recoveries which have been made by the Income-tax Department. He in his statement, has also deposed that some money was deposited at various branches of Punjab National Bank at Bangalore and he has examined all the Senior Managers of Punjab National Bank to show that various amounts were deposited in their Banks and the prosecution has also produced them in the witness box to substantiate their allegation as P.Ws.22, 23, 24, 25, 26 and 32. He has also examined the persons against whose names those amounts were deposited in the witness box. He has also examined the Income-tax Officer as P.W.14. P.W.44-Assistant Director of Income-tax

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(investigation) and P.W.51-S.Ganpathy Iyer. By this evidence the prosecution has established that the money was recovered at the house of the accused as well as various purchases of immovable properties made by the wife of the accused. The prosecution has tried to establish that all the moneys which had been recovered from the house of the accused, various deposits in the Punjab national Bank at various deposits in the Punjab National Bank at various places through the influence of the Regional Manager of Punjab National Bank and the recovery of the gold ornaments as well as the recovery of foreign exchange ie., dollars belong to accused. Thus, the prosecution has tried to establish that all the moneys belonged to the accused and after taking sanction, prosecution was launched against the accused. There is no two opinion in the mater that the initial burden lies on the prosectuion. In the case of C.S.D. Swami vs. The State reported in AIR 1960 SC 7, this Court has taken the view that in Section 5(3) of the Prevention of Corruption Act, 1947, a complete departure has made from the criminal jurisprudence still initial burden lies on the prosecution and in that context it has been observed as follow:-

> "Section 5(3) does not create a new offence but only lays down a rule of evidence, enabling the Court to raise a presumption of guilt in certain cricumstances - a rule which is a complete departure from the established principle of criminal jurisprudence that the burden always lies on the prosecution to prove all the ingredients of the offence charged, and that the burden never shifts on to the accused to disprove the charge framed against him."

Therefore, the initial burden was on the prosecution to establish whether the accused has acquired the property disproportionate to his known source of income or not. But at the same time it has been held in a case of State of M.P. Vs. Awadh Ksihore Gupta and others, reported in (2004) 1 SCC 691 that accused has to account satisfactorily the money received in his hand and satisfy the court that his explanation was worthy of acceptance. In order to substantiate the plea taken by the accused that all the moneys which had been received belonged to his wife and in support thereof he has examined as many as 13 witnesses including himself, his wife and his son-in-law. D.W.12 is the wife of the accused. She has deposed that the entire money belonged to her. She has admitted the raid on her

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house and she has also admitted that she has amassed the wealth by selling cycle rims and leather products without any bill and out of the money amassed by her she had persuaded her husband to deposit the same at various Banks. She has come forward and admitted the recovery of the foreign exchange at her house and she has accounted for the same. .....

.....

.....

Now, in this background, when the accused has come forward with the plea that all the money which has been recovered from his house and purchase of real estate or the recovery of the gold and other deposits in the Bank, all have been owned by his wife, then in that situation how can all these recoveries of unaccounted money could be laid in his hands. The question is when the accused has provided satisfactorily explanation that all the money belonged to his wife and she has owned it and the income-tax Department has assessed in her hand, then in that case, whether he could be charged under the Prevention of Corruption Act. It is true that when there is joint possession between the wife and husband, or father and son and if some of the members of the family are involved in amassing illegal wealth, then unless there is categorical evidence to believe, that this can be read in the hands of the husband or as the case may be, it cannot be fastened on the husband or head of family. It is true that the prosecution in the present case has tried its best to lead the evidence to show that all these moneys belonged to the accused but when the wife has fully owned the entire money and the other wealth earned by her by not showing in the Income-tax return and she has accepted the whole responsibilities, in that case, it is very difficult to hold the accused guilty of the charge.

Accordingly, dismissing the appeal, the Honourable Apex Court, have confirmed the acquittal of the accused.

But the above said facts will not be applicable to the present facts of the case because the defence taken in the case on hand is that from out of the chit prize amount Rs.5,00,000/-, the father of the accused had constructed the shopping complex. But absolutely in this case, there is no evidence produced by way of defence by D.W.1, the father of the accused, to show that he has received Rs.5,00,000/- from the Cheran Chit Funds Company.

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49(F)The learned Additional Public Prosecutor relying on 2001 SCC (Cri) 1209 (K.Ponnuswamy Vs. State of Tamil Nadu), would contend that when the accused's income was proved to be meagre, but during that period it was brought to light that he is owning assets disproportionate to the known source of income he is liable to be convicted under Section 13(1)(e) r/w 13(2) of the Prevention of Corruption Act. The facts of the above said ratio decidendi is that:

> The accused in that case is the then Minister of Tamil Nadu Government. According to the prosecution, during the cheque period when the accused became the Minister, he acquired in his name and in the names of A-2 to 5, pecuniary resources and property disproportionate to his known source of income. The accused were charged under Section 13(1)(e) r/w 13(2) of the Prevention of Corruption Act. After conviction the trial Court directed confiscation of the pecuniary resources and properties to the extent of Rs.77,49,337/77. On appeal this Court acquitted A2 to A5 but confirmed the conviction of the A1/appellant, which necessitated A1 to move before the Honourbale Apex Court.
>
> The defence taken by the accused was that the assets belongs to A2 to A5 and that they are their self acquired properties. Negativing the evidence of the accused, the Honourable Apex Court has held as follows:-
>
> > We are presuming that A4 had independent income. However, prior to the check period A4 has not been afflicted by any love and affection and had not made any gifts to any member of the family of A1. Prior to the check period A4 did not even extend help to pay off the small debts of A1 even after the decrees had been passed against A1. Yet suddenly, during the check period ie. When A1 is a Minister, A4 donates large sum of money to A2 and A3. The natural presumption, considering the common course of natural events and human conduct is that A1 would have used his nephew A4 to transfer his (A1's) monies to A2 & A3. This is the supposition which any prudent man under these circumstances would act upon considering the natural course of events. The trial Court and the High Court thus rightly took this as proved by legal evidence. The prosecution having established by legal evidence that the monies were transferred by A1 to A2 & A3 through A4 and that these were monies of A1 in the hands of A2 & A3, it was for the appellant to satisfactorily account for the gifts. He could have done so by showing that even before the check period A4 had made gifts of substantial amounts.

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It has not been claimed by A2and-or A3 and/or A4 that before the check period also A4 had made any such gifts. It is also not their case that after the check period gifts were made. Thus the trial Court and the High Court were right in not believing the case of gifts supposedly made out of a sudden burst of love and affection. Both the trial Court and High Court were right in convicting the appellant.

Accordingly the appeal preferred the appellant/A1 was dismissed by the Honourable Apex Court.

49(G) In this case, except the accused no other relative was roped in because there was no allegation that they were having disproportionate wealth to the known source of income. By way of defence only the accused by examining his parents and wife took a plea that the construction of the building in the sopping complex in the above mentioned survey number properties were constructed from out of the income of his father, mother and wife. Having taken such a defence, the accused have miserably failed to prove that his parents had known source of income to construct the shopping complex worth about Rs.11,00,000/- in the year 1990. It is not denied that the shopping complex and other buildings are in the name of the accused. Under such circumstances, it is the bounden duty of the accused to prove that only from the known source of income these buildings were constructed by him. Taking into consideration all the above said circumstances and facts, the learned trial Judge has come to the correct conclusion that the charge levelled against the accused under Section 13 (1)(e) r/w 13(2) of the Prevention of Corruption Act, has been proved beyond any reasonable doubt. Under such circumstances, I do not find any reason to interfere with the findings of the learned trial Judge. Point is answered accordingly.

50.In fine, the appeal is dismissed confirming the judgment of the trial Court in Special C.C.No.1 of 1997 on the file of the Special Judge-cum-Chief Judicial Magistrate, Coimbatore.

ssv

Sd/
Asst. Registrar

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Sub Asst.Registrar

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To,

1.The Special Judge-cum-
Chief Judicial Magistrate,
Coimbatore.

2.The Public Prosecutor,
High Court, Madras.

3.The Inspector of Police,
Vigilance and Anti Corruption,
Coimbatore.

+ One cc to Mr. Ram and Ram Advocate SR 35932

ASM (co)

sg 28/6/07

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19.06.2007

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